

REGISTER OF ACTIONS
CASE No. D-101-CV-2021-01717

Joseph Roybal v. Darden Restaurants Inc, et. al.

Case Type: Tort
Date Filed: 08/04/2021
Location:
Judicial Officer: Ellenwood, Kathleen McGarry

PARTY INFORMATION

Defendant	Darden Concepts Inc 400 N Pennsylvania Ave #600 Roswell, NM 88201	Attorneys
Defendant	Darden Restaurants Inc 400 N Pennsylvania Ave #600 Roswell, NM 88201	
Defendant	GMRI INC	
Plaintiff	Roybal, Joseph	Brian Gaddy <i>Retained</i> 505-889-9090(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
08/04/2021	Cause Of Actions	Tort: Personal Injury Non Auto (Negligence, Product Liability, Punitive Damages, Damages)	
	Action Type	Action	
08/04/2021	<u>OPN: COMPLAINT</u>		
	<i>Complaint for Damages</i>		
08/05/2021	Summons		
	<i>Darden Concepts Inc</i>		
	Darden Concepts Inc	Served	10/01/2021
		Response Due	11/01/2021
		Returned	10/11/2021
08/05/2021	Summons		
	<i>Darden Restaurants Inc</i>		
	Darden Restaurants Inc	Served	10/01/2021
		Response Due	11/01/2021
		Returned	10/11/2021
08/26/2021	<u>NTC: OF NON-AVAILABILITY</u>		
	<i>Notice of Non-Availability</i>		
10/11/2021	<u>SUMMONS RETURN</u>		
	<i>Summons Return Served on Darden Restaurants Inc on 10/01/2021</i>		
10/11/2021	<u>SUMMONS RETURN</u>		
	<i>Summons Return - Served on Darden Concepts Inc on 10/01/2021</i>		
10/21/2021	<u>AMENDED COMPLAINT</u>		
	<i>First Amended Complaint for Damages</i>		
10/21/2021	Summons		
	<i>GMRI Inc</i>		
	GMRI INC	Unserved	

FINANCIAL INFORMATION

	Plaintiff Roybal, Joseph			
	Total Financial Assessment			132.00
	Total Payments and Credits			132.00
	Balance Due as of 10/29/2021			0.00
08/04/2021	Transaction Assessment			132.00
08/04/2021	File & Serve Payment	Receipt # SFED-2021-4930	Roybal, Joseph	(132.00)

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
8/4/2021 2:38 PM
KATHLEEN VIGIL CLERK OF THE COURT
Alex Gallegos

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

JOSEPH ROYBAL,

Plaintiff,

Case assigned to Ellenwood, Kathleen McGarry

vs.

NO. D-101-CV-2021-01717

DARDEN RESTAURANTS, INC. and
DARDEN CONCEPTS, INC.,

Defendants.

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Joseph Roybal, by and through his attorney of record, Gaddy Law Firm, and for his complaint for damages states as follows:

1. Mr. Roybal is a resident of Santa Fe County, New Mexico.
2. Upon information and belief, Darden Restaurants, Inc. is a foreign corporation not licensed to do business in the state of New Mexico. Upon information and belief, Darden Concepts, Inc., is a foreign corporation licensed to do business in the state of New Mexico. Defendants own and operate a restaurant known as the Olive Garden, which is located at 3781 Cerrillos Road, Santa Fe, New Mexico. Defendants' registered agent is Corporation Creations Network, Inc. 400 N. Pennsylvania, Ave., #600, Roswell, New Mexico 88201.
3. Jurisdiction and venue are proper in the District Court of Santa Fe, New Mexico, pursuant to NMSA Sect. 38-3-1 (1978).

FACTUAL AND PROCEDURAL BACKGROUND

4. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

5. At all times material to this lawsuit, Defendants owned, operated and were doing business as a restaurant named “Olive Garden” located at 3781 Cerrillos Road, Santa Fe, New Mexico (“Olive Garden”).

6. On or about August 4, 2018, Defendants were in the business of purchasing, preparing, and cooking foods for sale to the general public.

7. At all relevant times, Defendants owned, controlled, managed and operated Olive Garden. The general public was invited for the purpose of obtaining food for general consumption for compensation to be paid to the Restaurant.

8. On August 4, 2018, Mr. Roybal ordered, purchased, and consumed food prepared and sold by the Olive Garden, which was delivered to Mr. Roybal by Defendants’ wait staff.

9. Unbeknownst to Mr. Roybal, there was a hard foreign object in the food.

10. On August 4, 2018, and subsequently thereafter, while eating and ingesting the food purchased from and formulated, made, inspected and delivered by Defendants, Mr. Roybal bit down on the hard foreign object and cracked four teeth.

11. As a result of eating the meal formulated, made, inspected, and delivered by Defendants, Mr. Roybal suffered four cracked teeth requiring either an extraction and an implant or a crown.

12. As a result of ingesting the food formulated, made, inspected and delivered by Defendants on August 4, 2018, Mr. Roybal sustained severe and permanent personal injuries, requiring the extraction of at least one tooth and replacement of the tooth with an implant and the crowning of three more teeth.

13. The injuries sustained by Mr. Roybal were caused solely by the recklessness, gross negligence, negligence and carelessness of Defendants in formulating, making, inspecting and

delivering food and meals; purchasing and ordering food; storing, packing refrigeration and maintaining of its food; inspection, use, preparation, cleaning and cooking of its food; failing to provide, maintain and use proper facilities and procedures at the Olive Garden for the packaging, refrigeration, maintenance and preparation of its food; failing to provide instruction to employees concerning the handling, cleaning and preparing of food; failing to instruct employees in the storing, maintenance, and preparation of food; failing to properly prepare, inspect, and cook the food; and failing to comply with ordinances, rules, regulations, laws, statutes concerning the acquisition, maintenance, sale and handling of foods.

14. As a result of the recklessness, gross negligence, negligence and carelessness of Defendants, Plaintiff was seriously injured, suffered extreme conscious pain and suffering, eventually leading to the replacement of one tooth and the crowning of three others.

15. By reason of the above, Mr. Roybal has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action.

NEGLIGENCE

16. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

17. Defendant owed a duty of reasonable and ordinary care to serve safe Food to its patrons.

18. Defendants' failure to perform that duty constituted a breach of that duty.

19. As a direct and proximate result of the defendant's actions, Mr. Roybal has been harmed and is entitled to damages in an amount to be proven at trial.

20. The acts of Defendants alleged herein or willful, wanted, reckless and intentional, thereby entitling Plaintiff to an award of punitive damages.

PRODUCT LIABILITY

21. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

22. Defendants owed a duty of ordinary care to avoid a foreseeable risk of injury caused by a condition of the product or the manner in which it was used.

23. Defendants' failure to perform that duty constituted a breach of that duty.

24. As a direct and proximate result of Defendants' actions or failure to act, Mr. Roybal has been harmed and is entitled to damages in an amount to be proven at trial.

PUNITIVE DAMAGES

25. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

26. Defendants acted in a willful, malicious, wanton, or reckless manner.

27. As a direct and proximate cause of Defendants' reckless actions, Mr. Roybal suffered physical injuries.

DAMAGES

28. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

29. As a direct and proximate result of Defendants' actions or omissions, Mr. Roybal suffered the following injuries and damages:

- a. Physical pain and mental anguish in the past and future
- b. Physical impairment in the past and future.
- c. Medical expenses in the past and future.
- d. Loss of household services in the past and future.

- e. Loss of enjoyment of life in the past and future.

Respectfully submitted,

GADDY LAW FIRM

A handwritten signature in black ink, appearing to read "Brian Gaddy". The signature is written in a cursive, flowing style.

4420 Prospect Ave. NE
Albuquerque, New Mexico 87110
P: 505-889-9090
F: 505-273-7943
Attorney for the Plaintiff

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
8/26/2021 4:35 PM
KATHLEEN VIGIL CLERK OF THE COURT
Judyn Martinez

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

JOSEPH ROYBAL,

Plaintiff,

v.

Cause No.: D-101-CV-2021-01717

DARDEN RESTAURANTS, INC, and
DARDEN CONCEPTS, INC.,

Defendants.

NOTICE OF NON-AVAILABILITY

Brian Gaddy attorney for Plaintiffs advises the Court that he will be on Vacation and unavailable from November 22, 2021, through November 29, 2021, and respectfully requests that no hearings, depositions, mediations, and other proceedings requiring Plaintiffs' counsel's attendance, be scheduled during that time period.

Respectfully Submitted:

GADDY LAW FIRM

/s/ Brian Gaddy
Brian Gaddy
4420 Prospect Ave. NE
Albuquerque, NM 87110
(505) 254-9090
Email: brian@gaddyfirm.com

FILED 1st JUDICIAL DISTRICT COURT
 Santa Fe County
 10/11/2021 5:24 PM
 KATHLEEN VIGIL CLERK OF THE COURT
 Manna Sisneros

SUMMONS	
<i>District Court:</i> FIRST JUDICIAL DISTRICT <i>Court Address:</i> P.O. Box 2268 Santa Fe, NM 87504-2268 <i>Court Telephone:</i> (505) 455-8250	Case Number: D-101-CV-2021-01717 Assigned Judge: Hon. Kathleen McGarry Ellenwood
Plaintiff: Joseph Roybal v. Defendants: Darden Restaurants, Inc., and Darden Concepts, Inc.	Defendant(s): <i>Darden Restaurants, Inc.</i> <i>c/o Registered Agent, Corporation Creations</i> <i>Network, Inc.</i> 400 N. Pennsylvania Ave., #600 Roswell, NM 88201

TO THE ABOVE-NAMED DEFENDANTS: Take notice that:

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
2. You must respond to this lawsuit in writing. You must file your response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA.) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066

Dated at Santa Fe, New Mexico on August 5th, 2021.

CLERK OF COURT

Kathleen Vigil

BY:

Corinne S. Onate



Respectfully submitted,

GADDY LAW FIRM

/s/ Brian Gaddy

Brian Gaddy

Attorney for Plaintiff

4420 Prospect Ave. NE

Albuquerque, NM 87110

Phone: (505) 254-9090

Fax: (505) 273-7943

brian@gaddyfirm.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 NMRA OF THE NEW MEXICO
RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN

STATE OF NEW MEXICO)

)ss

COUNTY OF Chavez)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in Chavez county on the 25th day of October, 2021, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

☒ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (used when service is by mail or commercial courier service). Via Certified mail return Receipt Requested.

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at _____ (insert defendant's last known mailing address).

☐ to _____, an agent authorized to receive service of process for defendant _____.

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (used when defendant is a minor or an incompetent person).

☐ to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: \$7.53

Marcia S. Trachsel
Signature of person making service

Title (if any)

Subscribed and sworn to before me this 11 day of October, 2021.

Arthur A. Gonzales
Judge, notary or other officer
authorized to administer oaths

Notary

Official title



USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 14-8300-017, effective for all cases pending or filed on or after December 31, 2014.]

7020 1610 0002 2784 7142

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com**OFFICIAL USE**

Certified Mail Fee

\$ 3.75

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy)☐ Return Receipt (electronic)☐ Certified Mail Restricted Delivery☐ Adult Signature Required☐ Adult Signature Restricted Delivery

Postage

\$ 0.73

Total Postage and Fees

\$ 7.53

Postmark
Here

Sent To

Darden Restaurants, Inc. 9/28/21 (R. Joseph P. Paul)

Street and Apt. No., or PO Box No.

400 N. Pennsylvania Ave #600

Roswell, NM 88201 (R. Joseph P. Paul)

PS Form 3800, April 2015 (PSN 7530-02-000-9047)

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Darden Restaurants, Inc.
c/o Registered Agent, Corporation
Creations Network, Inc.
400 N. Pennsylvania Ave #600
Roswell, NM 88201



9590 9402 6713 1060 2289 74

2. Article Number (Transfer from service label)

7020 1610 0002 2784 7142

PS Form 3811, July 2020 PSN 7530-02-000-9055 (R. Joseph P. Paul)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X P. Paul C. J.

☐ Agent☐ Addressee

B. Received by (Printed Name)

LOUIS J. J.

C. Date of Delivery

10/1/21

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Registered Mail Restricted Delivery

PSN 7530

☐ Priority Mail Express®☐ Registered Mail™☐ Restricted Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt



[FAQs >](#)

Track Another Package +

Tracking Number: 70201810000227847142

Remove X

Your item was delivered to the front desk, reception area, or mail room at 10:51 am on October 1, 2021 in ROSWELL, NM 88201.

Delivered, Front Desk/Reception/Mail Room

October 1, 2021 at 10:51 am
ROSWELL, NM 88201

Feedback

Get Updates 

Text & Email Updates



Tracking History



October 1, 2021, 10:51 am

Delivered, Front Desk/Reception/Mail Room
ROSWELL, NM 88201

Your item was delivered to the front desk, reception area, or mail room at 10:51 am on October 1, 2021 in ROSWELL, NM 88201.

October 1, 2021, 6:36 am

Out for Delivery
ROSWELL, NM 88203

October 1, 2021, 6:25 am

Arrived at Post Office

ROSWELL, NM 88203

Product Information

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

Feedback

FILED 1st JUDICIAL DISTRICT COURT
Santa Fe County
10/21/2021 10:52 AM
KATHLEEN VIGIL CLERK OF THE COURT
Marina Sisneros

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

JOSEPH ROYBAL,

Plaintiff,

Case assigned to Ellenwood, Kathleen McGarry

vs.

NO. D-101-CV-2021-01717

DARDEN RESTAURANTS INC.,
DARDEN CONCEPTS, INC., and
GMRI, INC.

Defendants.

FIRST AMENDED COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Joseph Roybal, by and through his attorney of record, Gaddy Law Firm, and for his complaint for damages states as follows:

1. Mr. Roybal is a resident of Santa Fe County, New Mexico.
2. Upon information and belief, GMRI, Inc. is a foreign corporation licensed to do business in the state of New Mexico. Upon information and belief, Darden Concepts, Inc., is a foreign corporation licensed to do business in the state of New Mexico. Defendants own and operate a restaurant known as the Olive Garden, located at 3781 Cerrillos Road, Santa Fe, New Mexico. Defendants' registered agent is Corporation Creations Network, Inc. 400 N. Pennsylvania, Ave., #600, Roswell, New Mexico 88201.
3. Jurisdiction and venue are proper in the District Court of Santa Fe, New Mexico, pursuant to NMSA Sect. 38-3-1 (1978).

FACTUAL AND PROCEDURAL BACKGROUND

4. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

5. At all times material to this lawsuit, Defendants owned, operated and were doing business as a restaurant named “Olive Garden” located at 3781 Cerrillos Road, Santa Fe, New Mexico (“Olive Garden”).

6. On or about August 4, 2018, Defendants were in the business of purchasing, preparing, and cooking foods for sale to the general public.

7. At all relevant times, Defendants owned, controlled, managed and operated Olive Garden. The general public was invited for the purpose of obtaining food for general consumption for compensation to be paid to the Restaurant.

8. On August 4, 2018, Mr. Roybal ordered, purchased, and consumed food prepared and sold by the Olive Garden, which was delivered to Mr. Roybal by Defendants’ wait staff.

9. Unbeknownst to Mr. Roybal, there was a hard foreign object in the food.

10. On August 4, 2018, and subsequently thereafter, while eating and ingesting the food purchased from and formulated, made, inspected and delivered by Defendants, Mr. Roybal bit down on the hard foreign object and cracked four teeth.

11. As a result of eating the meal formulated, made, inspected, and delivered by Defendants, Mr. Roybal suffered four cracked teeth requiring either an extraction and an implant or a crown.

12. As a result of ingesting the food formulated, made, inspected and delivered by Defendants on August 4, 2018, Mr. Roybal sustained severe and permanent personal injuries, requiring the extraction of at least one tooth and replacement of the tooth with an implant and the crowning of three more teeth.

13. The injuries sustained by Mr. Roybal were caused solely by the recklessness, gross negligence, negligence and carelessness of Defendants in formulating, making, inspecting and

delivering food and meals; purchasing and ordering food; storing, packing refrigeration and maintaining of its food; inspection, use, preparation, cleaning and cooking of its food; failing to provide, maintain and use proper facilities and procedures at the Olive Garden for the packaging, refrigeration, maintenance and preparation of its food; failing to provide instruction to employees concerning the handling, cleaning and preparing of food; failing to instruct employees in the storing, maintenance, and preparation of food; failing to properly prepare, inspect, and cook the food; and failing to comply with ordinances, rules, regulations, laws, statutes concerning the acquisition, maintenance, sale and handling of foods.

14. As a result of the recklessness, gross negligence, negligence and carelessness of Defendants, Plaintiff was seriously injured, suffered extreme conscious pain and suffering, eventually leading to the replacement of one tooth and the crowning of three others.

15. By reason of the above, Mr. Roybal has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this action.

NEGLIGENCE

16. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

17. Defendant owed a duty of reasonable and ordinary care to serve safe Food to its patrons.

18. Defendants' failure to perform that duty constituted a breach of that duty.

19. As a direct and proximate result of the defendant's actions, Mr. Roybal has been harmed and is entitled to damages in an amount to be proven at trial.

20. The acts of Defendants alleged herein or willful, wanted, reckless and intentional, thereby entitling Plaintiff to an award of punitive damages.

PRODUCT LIABILITY

21. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

22. Defendants owed a duty of ordinary care to avoid a foreseeable risk of injury caused by a condition of the product or the manner in which it was used.

23. Defendants' failure to perform that duty constituted a breach of that duty.

24. As a direct and proximate result of Defendants' actions or failure to act, Mr. Roybal has been harmed and is entitled to damages in an amount to be proven at trial.

PUNITIVE DAMAGES

25. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

26. Defendants acted in a willful, malicious, wanton, or reckless manner.

27. As a direct and proximate cause of Defendants' reckless actions, Mr. Roybal suffered physical injuries.

DAMAGES

28. Plaintiff re-alleges in full each of the allegations of the forgoing paragraphs as if fully set forth herein.

29. As a direct and proximate result of Defendants' actions or omissions, Mr. Roybal suffered the following injuries and damages:

- a. Physical pain and mental anguish in the past and future
- b. Physical impairment in the past and future.
- c. Medical expenses in the past and future.
- d. Loss of household services in the past and future.

- e. Loss of enjoyment of life in the past and future.

Respectfully submitted,

GADDY LAW FIRM

A handwritten signature in black ink, appearing to read "Brian Gaddy". The signature is written in a cursive, flowing style with a large initial "B".

4420 Prospect Ave. NE
Albuquerque, New Mexico 87110
P: 505-889-9090
F: 505-273-7943
Attorney for the Plaintiff